

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Skype Communications S.A.R.L. |) | RM-11361 |
| |) | |
| Petition to Confirm a Consumer's Right to Use |) | |
| Internet Communications Software and Attach |) | |
| <u>Devices to Wireless Networks</u> |) | |

COMMENTS OF LG ELECTRONICS MOBILECOMM USA

LG Electronics MobileComm USA ("LG") hereby opposes the petition filed by Skype Communications S.A.R.L. ("Skype")¹ requesting that the Commission apply principles Skype finds in the Commission's 1968 *Carterfone* decision to regulate the business relationships between handset manufacturers and wireless carriers. The purpose of the *Carterfone* decision was to prevent extension of legacy AT&T's monopoly power into the end-user equipment market through its vertically integrated manufacturing arm, Western Electric. Given the highly competitive nature of today's wireless handset and services markets, a *Carterfone* policy is not needed. Moreover, because of technical differences in the operation of wireless and wireline services, granting the relief Skype seeks is likely to have unintended and adverse consequences for consumers. Absent market failure, the industry and the market, not regulation, should be the driving forces behind standard setting and innovation in the wireless environment.

¹ Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attach Devices to Wireless Networks, Skype Communications S.A.R.L., RM-11361, Report No. 2807 (Feb. 28, 2007) ("Petition") (citing *Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968), *recon. denied*, 14 FCC 2d 571 (1968) ("*Carterfone*").

1. A CARTERFONE POLICY IS NOT NEEDED IN LIGHT OF TODAY'S HIGHLY COMPETITIVE WIRELESS HANDSET AND SERVICES MARKETS.

In adopting the *Carterfone* decision, the FCC sought to remedy competitive harms that are not present in today's wireless market. In 1968, a telephone subscriber purchased service from legacy AT&T as a single, end-to-end service consisting not only of the wires and switches but also end-user equipment and inside wiring.² AT&T's tariffs contained "foreign attachment" provisions that prohibited non-AT&T products from being interconnected with the network. In *Carterfone*, the Commission invalidated the "foreign attachment" provision of AT&T's tariff, holding that subscribers had the right to attach any CPE to the wireline network "so long as the interconnection does not adversely affect the telephone company's operations or the telephone system's utility for others."³ The Commission did so knowing that, for the first time, it was introducing competition into the end-user equipment market.⁴

Carter-one-style regulation is not needed to introduce competition in the wireless handset market, as vigorous competition already exists. In the North American market, LG faces vigorous competition from Motorola, Nokia, Palm, RIM, Samsung, Kyocera, Sony-Ericsson and others. Moreover, new entrants continue to penetrate the market. Just this year, Apple announced that it will enter the mobile phone market with its iPhone product.⁵ This market structure contrasts markedly with 1968, when the only end-user equipment available was on a rental basis and consisted of a rotary-dial phone or, for an extra-monthly charge, a Touchtone ®

² See Peter W. Huber et al., *Federal Telecommunications Law* § 8.4.1.1 (2d ed. 1999).

³ *Carterfone*, 13 FCC 2d at 423-24.

⁴ See *id.* at 424 ("[n]o one entity need provide all interconnection equipment . . . any more than a single source is needed to supply the parts for a space probe,")

⁵ See Mike Musgrove, *Apple Seeks to Muscle Into Telecom with iPod Phone*, Washington Post, Jan. 10, 2007 at D1.

phone from Western Electric. Today, carriers are requesting handsets that have new capabilities, including enhanced Bluetooth and WiFi capabilities, as well as a panoply of devices at different price points to meet various market segments and consumer demands.

In addition, consumers may purchase handsets through a number of channels. Unlike the vertically integrated equipment market of 1968, no wireless carrier today manufactures handsets. Indeed, manufacturers and carriers pursue a variety of handset marketing and distribution strategies. LG, like many handset manufacturers, sells handsets through its wireless carrier customers, direct to the consumer (*e.g.*, via its website), and through various retail channels. In some instances, new products are exclusive to a particular provider for a limited time period, enabling carriers to compete in attracting customers based on their handset offerings. In other cases, consumers may obtain LG handset models from multiple carriers. The current handset market is marked by fierce competition, and manufacturers should continue to have the freedom and flexibility to determine how they distribute their products, including through exclusive contracts.

The wireless voice and broadband markets, too, are highly competitive. In its *Eleventh Annual CMRS Competition Report*, the FCC again held that the CMRS market is subject to “effective competition.”⁶ As the Commission found, the market is served by four nationwide wireless carriers – AT&T, Verizon Wireless, Sprint-Nextel and T-Mobile – as well as large regional carriers Alltel, U.S. Cellular and Dobson.⁷ None of these carriers is in a position to exercise market power comparable to the monopoly AT&T of 1968. Accordingly, given the

⁶ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eleventh Report, 21 FCC Rcd 10947, 10950 (72) (2006).

⁷ *Id.* at 10959 (¶ 25).

competitive conditions prevailing in the wireless handset and services market, there is no basis for the type of regulatory intervention Skype proposes.

11. DUE TO TECHNICAL DIFFERENCES BETWEEN WIRELINE AND WIRELESS SERVICES, APPLICATION OF A *CARTERPHONE* POLICY MAY HAVE UNINTENDED AND ADVERSE CONSEQUENCES FOR CONSUMERS.

Skype's Petition also fails to acknowledge fundamental differences between the wireline technology at issue in *Carterfone* and today's wireless technology. Placing wireless devices on carrier networks involves compatibility and RF interference issues not present in the wireline context. Because Skype's proposal fails to account for these concerns, it could, if adopted, impair the quality of wireless service delivered to consumers or prevent proper functioning of such services entirely.

As an initial matter, wireline networks operate pursuant to a single, uniform standard, while wireless networks use a variety of competing air-interfaces. Unlike wireline technology, compatibility between end-user equipment and the air-interface technology of a particular carrier is essential to the proper functioning of a wireless service. CMRS carriers use a variety of air-interfaces for voice communications, the most common being digital technologies GSM and CDMA. Other air-interface technologies are present in the market, though less widely used, such as iDEN, or in the process of being retired, like TDMA and AMPS. To support wireless broadband services, carriers have deployed, or have plans to deploy, EV-DO, HSDPA and WiMAX broadband technologies. In this environment, a requirement that carriers support any device brought to their networks – as Skype proposes⁸ – is simply not sustainable. Carrier networks are not configured to support *every* device, and it would be uneconomical and unwise to require them to do so.

⁸ See Petition at 26-27

A second distinction is that, because wireless devices operate through the transmission of RF energy using a shared, finite spectrum resource, an unauthorized wireless device may cause harm not only to carrier networks but to users of competing networks on adjacent frequencies. Consumers have neither the information nor the incentive to determine whether a particular device complies with FCC rules and industry standards regarding interference control. In addition, certification by the FCC does not mean that the device has been tested for performance or interoperability on carriers' networks. For example, AT&T's network is composed of a number of different GSM and UMTS network suppliers. Carrier certification procedures protect customers by ensuring that a device interoperates among the various vendor and carrier networks.

Moreover, carrier certification often includes stringent RF or vocoder requirements, which ensure spectral efficiency on the carrier's network. Handset certification by carriers also serves to identify and remedy security vulnerabilities and can help to maximize performance characteristics, such as battery life. These are important functions given the rise of worms, malware, and viruses targeting smartphones and other handsets. Indeed, carriers, manufacturers, and application providers participate in industry forums, such as OMA, to assure that services interoperate and address security issues. By eliminating carriers' role in screening devices, Skype's proposal could reduce the quality of service on individual carrier networks and of wireless services generally and increase the potential for security risks.'

In addition, the proposed regime would increase the difficulty of detecting and eliminating the interference caused by noncompliant or malfunctioning devices. Initial device screening enables carriers to manage potential interference problems in a proactive manner. If

⁹ Carriers, for example, often mandate more rigorous emissions compliance than is required under the FCC rules in order to facilitate use of devices in very close proximity to other devices.

carriers are required to accept any devices consumers bring on to their networks, the regime becomes entirely reactive – carriers can address interference problems, if they can identify the source, only when they arise. Reactive interference control is the prevailing regime in unlicensed bands, which are bedeviled by interference and deliver a generally lower quality of service than licensed CMRS offered using “exclusive use” spectrum. Because, as discussed above, a *Carterfone* approach is not needed to promote competition in the wireless handset or services market, there is no reason to subject consumers to the increased interference and decreased quality of service such a regime would entail. Given the diversity of devices, technologies and operating system platforms and the complexity involved in ensuring that devices and networks operate seamlessly, industry, not regulation, is the best forum to establish standards in the wireless environment.

III. CONCLUSION

Given the vigorous competition present in the wireless handset and services market, the Commission should reject Skype’s proposal for new regulations based on *Carterfone*. Because of technical differences between wireless and wireline services, such regulations are likely to have unintended consequences adverse to consumers.

Respectfully submitted,

By: /s/ Alan K. Tse

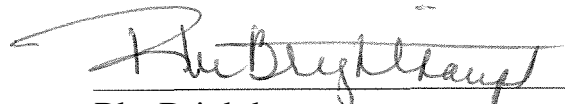
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CERTIFICATE OF SERVICE

I, Rhe Brighthaupt, hereby certify that on this 30th day of April, 2007, I caused a copy of the foregoing Comments of LG Electronics MobileComm USA to be sent by first-class U.S. mail, postage-prepaid to the following:

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